United States District Court Southern District of Texas

## **ENTERED**

October 04, 2017 David J. Bradley, Clerk

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ANTONIO COTIY-MONZON and	§	
CATARINA CRISTINA ECOQUIJ-	§	
XOCOM, Individually, and on behalf of	§	
all others similarly situated,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-17-00842
	§	
FU CHENG, INC., d/b/a BUFFET KING,	§	
INC., et al.,	§	
	§	
Defendant.	§	

## ORDER GRANTING THE PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION AND ISSUANCE OF NOTICE

The plaintiffs, Antonio Cotiy-Monzon and Catarina Cristina Ecoquij-Xocom, individually and on behalf of others similarly situated, have moved for conditional certification and issuance of notice. (Docket Entry No. 27). The plaintiffs allege that they and similarly situated cooks, food preparers, and dishwashers who worked for the defendants, Fu Cheng, Inc., d/b/a/ Buffet King, Inc., Chang Cheng Ye, and Fan Fu Ye, were not paid at overtime rates when they worked over 40 hours per week or simply not paid for hours they worked, in violation of the FLSA, 29 U.S.C. § 201, *et seq.* The defendants have responded opposing the motion to certify a collective action and issue notice. Their arguments do not present a sufficient basis to deny conditional certification.

The differences the defendants assert between cooks of Mongolian versus Chinese dishes are irrelevant to the FLSA issues. The differences between food preparers or cooks and dishwashers can be addressed by subclassing, if needed. The record meets the requirements for conditional

certification and issuance of notice. Mooney v. Aramco Servs. Co., 54 F.3d 1207, 1216 (5th Cir.

1995). The motion, (Docket Entry No. 27), is granted.

The Notice to Employees of Buffet King and Notice of Consent attached as Exhibit A to the

Plaintiffs' Motion for Conditional Certification is approved. The plaintiffs may mail the notices

attached as Exhibit A, to potential opt-in class members, along with a self-addressed stamped

return envelope to Kennard Richard, P.C. No later than October 13, 2017, the defendants must

provide the plaintiffs' counsel with the names and addresses of all cooks, dish washers, and food

preparers employed by Fu Cheng, Inc., d/b/a Buffet King, Inc., Chang Cheng Ye, and Fan Fu Ye,

during the three years before March 16, 2017. The notices are to be mailed no later than October

30, 2017. By that date, the defendants must also place the notice and the notice of consent attached

as Exhibit A to the Plaintiffs' Amended Motion for Conditional Certification at business locations

that are plainly visible to all employees.

The potential plaintiffs will have until January 8, 2018, to file their notices of consent with

the court.

SIGNED on October 4, 2017, at Houston, Texas.

Lee H. Rosenthal

Chief United States District Judge

2